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In the matter of:

COMPULSORY LICENSE FOR SECONDARY

TRANSMISSIONS BY CABLE SYSTEMS

ROYALTY ADJUSTMENT PROCEEDING

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CRT. Docket 80-3

2100 K Street, N.W.

Room 610

Washington, D.C.

Monday, October 6, 1980

The hearing in the above-entitled matter commenced
at 10:00 a.m., pursuant to notice.

BEFORE:

MARY LOU BURG, Chairman

THOMAS C. BRENNAN, Commissioner

CLARENCE L. JAMES, JR., Commissioner

FRANCE GARCIA, Commissioner

APPEARANCES:

FRITZ ATTAWAY, Attorney-at-Law
ROBERT GARRETT, Attorney-at-Law
Counsel for Copyright Owners

STUART F. FELDSTEIN, Attorney-at-Law
Counsel for NCTA

BENJAMIN L. ZELENKO, Attorney-at-Law
Counsel for ASCAP

C O N T E N T S

WITNESS: Direct Cross Redirect Recross

RICHARD E. YOUNG

by Mr. Feldstein

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by Mr. Attaway

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CHAIRMAN BURG: On the record.

Whereupon,

RICHARD E. YOUNG

was called as a witness and, having been previously duly sworn,
was examined and testified as follows:

CHAIRMAN BURG: Mr. Feldstein, thank you for getting
your witness in. We thank you for coming back again, Mr. Young.

DIRECT EXAMINATION

BY MR. FELDSTEIN:

Q Mr. Young. Would you state your full name, the
company you are with, your position?

A Richard E. Young, Vice President of Communications
for the Times Mirror Cable Television Company.

Q Can you tell us how your job relates to the prepara-
tion and presentation of rate increases?

A My department, which is a small department, handles
presentation of the rate cases for all of our companies which
includes 175 franchises distributed among 41 systems in 14
states currently.

Q How long have you been doing this job, Mr. Young?

A Really, since 1971. Soon after I joined the company,
I began handling rate increases for the company. If I might
explain a part of my background at this point?

Q Please do.

A When I joined Time Mirror Company in '71, I was a city

etp2 1 councilman in a city adjacent to one of the television
2 companies' franchise systems in a small suburb of Los Angeles.
3 That background caused me to gravitate towards handling more
4 and more of the company's general presentation work and dealing
5 with franchise authorities, state city counsel, whatever
6 matter we had that related to local government.

7 Included in that was franchise renewals and problems
8 of service, whatever might cause the company to be before
9 a local body.

10 Q You testified, Mr. Young, that you were a city
11 official in the suburb. Therefore, you were a regulator.
12 Perhaps, you can shed some light by making some observations
13 on the approach a City Council might take to a business like
14 cable television?

15 A Well, in the first few days of being in the cable
16 business, it really was a business I had no posture to before.
17 I was not surprised as a counselor that a company was granted
18 a franchise by the local government, than government had
19 control over standards of services and billing practices.

20 I was dismayed to learn they controlled the company's
21 rate. I felt in my experience as a counselor that was improper
22 and unsatisfactory forum to handle a business, particularly like
23 cable television, which is primarily entertainment.

24 It is certainly not a utility service. I never felt
25 it was a utility service although it is typically the reaction
by the counsel that is a utility service. Handling rate cases

etp3

1 for almost 10 years probably for the over 175 companies we
2 acquired a company in 1979. I, personally, may never get to
3 all of them. I have approached 100 different cities. In many of
4 those times nothing has changed my mind that the city counsel
5 is not the right forum for handling the companies' rates.

6 Q Let me ask you a little about the size and charac-
7 teristics of the company for which you work. Can you tell us
8 the size of the company and the growth of the company between
9 October '76 and April 1980?

10 A We did not own communications property in '76, I
11 went back to their records. At that time, their subscribers
12 at Times Mirror would have been 368,000. Currently, April of
13 this year, it was 507,000. So, we have had a 38 percent
14 increase in subscribers during that period of time.

15 Q The company that you purchased in 1979, that was
16 communications property; is that correct?

17 A That is correct.

18 Q So Times Mirror purchased communications property?

19 A Yes.

20 Q Those are the two companies which are now one?

21 A Yes.

22 Q Can you tell us the breakdown of the system size in
23 terms of your copyright filing by form?

24 A Form 1 which is the smaller system or 11 form 2, 11,
25 16 and 38.

etp4

1 Q Would you please relate for us the rate regulation
2 statistics as they affect the systems owned by the company?

etp4

3 A Five are under what we in industry are inclined
4 to look at as desirable but which in a strong sense are the
5 most strict regulation at all. Local government decided we
6 may have a fixed percentage of the consumer price index, a
7 change in the consumer price index. We have five like that.
8 Lafayette plus Lafayette West, Indiana.

9 They are at 30 percent of the consumer
10 price index. That was a communications property system. That
11 was done in 1977 but I am not certain.

12 It seems to me it was in '77. Three are at 60
13 percent of the consumer price index of the one the change may
14 only be implemented every two and a half years. I call it a
15 negative compound in effect of being delayed and implementing
16 the increase for such a long period of time.

17 Out of 175 franchises, five are deregulated or
18 regulated on that basis.

19 Q How many actually need local government approval?

20 A One hundred and three.

21 Q How many are ostensibly without regulation?

22 A Sixty-seven do specifically not implemented
23 regulation. Some say the City Council has the right to regulate
24 rates and they have chosen to do so. If that was their
25 practice, they would be listed in that group. I know in

etp5

1 looking at this data and talking with our field people, of that
2 67, 55 are so situated that they are systems that surround small
3 systems or franchises in this case. They are near or adjacent
4 to a larger lead community franchise.

5 If big town A is regulated on price and small
6 town B, C, and D around it choose to avoid the problems of
7 deregulation by deregulating the rates, we are just by the
8 dictate of trying to maintain a proper public image find it
9 necessary to keep essentially the same rates in place when
10 a situation like that exists. Look at those broadly as
11 deregulated systems just is not the case. Really, only the
12 difference between 55 and 67, 12 or so, are in situations
13 where you can really say the company can set the prices as
14 they see the marketplace would bear.

15 CHAIRMAN BURG: In that situation, Mr. Young,
16 the rate that is maintained among those contiguous franchises,
17 they put down the higher rate. Or is the high rate pulled
18 up to them?

19 THE WITNESS: We will elevate those slightly above
20 the regulated town, hopefully, to encourage the regulated
21 town to move to that position.

22 CHAIRMAN BURG: It depresses the high rate?

23 THE WITNESS: certainly, it depresses what you
24 could do if the entire group was deregulated. I think the
25 entire industry is below what they could do. We changed the

1 regulated up to \$7.50 or \$8 and it ought to be a \$10 business.

etp6

2 CHAIRMAN BURG: If there were no regulations and
3 if the entire industry were deregulated and could you charge
4 in effect whatever the traffic would bear, what is your
5 guess as to how much the subscriber rate would be?

6 THE WITNESS: It is more of a complicated question
7 today than it would be a year or two ago before tiering.
8 We are talking about different sets of possibilities. We
9 are more in urban markets where we are much more dictated
10 by the marketplace than we have been in the classic systems
11 that were primarily cable television, bread and butter, up
12 until the last couple of years.

13 What is my average rate? I have never really
14 thought about it. \$7.27. It would have to be 25 percent
15 higher.

16 BY MR. FELDSTEIN:

17 Q Thus, as the Chairman has elicited from you, in
18 many of the so-called deregulated communities, are you
19 stating, therefore, they are effectively regulated --

20 A Yes. In an aroundabout way. The deregulation
21 is only apparent deregulation but not in fact.

22 Q Of your 175 franchises you are only talking about
23 12 that are truly in your mind deregulated?

24 A Yes, where we are free to set the rates at what
25 we believe the marketplace would find acceptable.

etp7

1 Q Let's talk a bit about your rate request and rate
2 increase experience. Could you, please, relate to the
3 Tribunal what your October '76 to April 1980 companywide
4 experience has been?

5 A It was interesting having to do this. I had never
6 done anything like that. During that period, 294 price
7 increases were implemented among the 175 systems. In fact,
8 less than that. Nine of the systems were new during that
9 period.

10 So, the 294 were distributed among something
11 less than 175. Several of the nine had one increase during
12 the period as I recall. Forty-six had three or more increases.
13 Two or more were shared by another 60 systems. That surprised
14 me that there was that high a proportion of double and triple
15 increases.

16 I think it encouraged me that we are going where we
17 can be successful with local government in presenting rates.
18 We have not raised rates 25 cents. The smaller increase we have
19 processed was 45 cents.

20 We have ended up with less as a result of arbitrated
21 decision on the part of local government.

22 Q How have your rates behaved on average in the time
23 period in question?

24 A The rate change at 10-1-76 average rate \$6.22, and
25 April, '80, \$7.27, a 17 percent increase.

etp8

1 Q You have told us here that you believe that the
2 presence of regulation has kept your rates below what optimally
3 they could be in the absence of regulation; is that correct?

4 A Yes.

5 Q Is it true that you are placed in a position of
6 occasionally being delayed or over?
7 Are there other aspects of regulation in addition to holding
8 down the amount which enter into the picture such as delay
9 and things of that nature?

10 A Certainly, you get into the problems of what I
11 call the horse trade. You are encouraged by past events in
12 nearby systems or comment from the council to be pushed towards
13 offering new services or rebuilding the plant physically,
14 replacing the equipment in the plant to achieve an increase.

15 I am dumbfounded. I started to say surprise, for
16 example, communications property practice. They were
17 companies operating on cash flows heavily leveraged. Rate
18 increases were important to us. They were vital to them.
19 They made horse trade, compromises in adding new service
20 that cost new capital and fixed expenses and ongoing expenses
21 that were offset and some benefit from a rate increase.

22 That could make sense if you could repeat that.
23 The problem is it becomes a very tough act to follow. You
24 quickly run out of things to do for the system that could
25 encourage the city council to move after 18 months or so.

etp9

1 If you come back the next time and request a
2 semi-increase, my experience with dealing with some of these
3 systems were it had been CPI's practices, you are out of luck.
4 They get the feeling you must have been satisfied with the
5 rates before.

6 If you want an increase now, you must give us
7 something for us. I originally said it is the wrong forum
8 for it. The city council has not good reason to allow a
9 company to change its place. The company can't come out of
10 business its worth in salvage. The company is going to be
11 there. What will you do if we say no, Mr. Young? It
12 is fun to try to answer. My typical answer, we are giving
13 good service.

14 Our plant is here. We will continue to give good
15 service. I appeal to your fairness, gentlemen. Sometimes it
16 works. A lot of times that does not. You end up sometimes
17 for years with no rate increase.

18 We just resolved on in Toronto, Ohio. We are
19 paying \$4.50. That was for good service, well operated and
20 maintained. I was not there but one of my predecessors said
21 when he was there asking for rates, they were flying paper
22 airplanes.

23 We were in a small town; the City of Los Angeles.
24 We serve them. I have seen the spectrum. I have been before
25 that council. We deal with many, many of them. City Council

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etpl0

1 dog barking and things of that nature. There is no reason
2 for them to say yes. Charge the people who are going to
3 vote for me next month or year more money. We hear from
4 the public and the council. Here is a price that we can
5 hold in the face of all the other rising prices in town.

6 Bread is going up, gas is going up. Let's keep
7 cable where it is. I could not have quoted it more properly.
8 Those are exactly the words I have heard in American attitude.

9 COMMISSIONER GARCIA: What is your success ratio?

10 THE WITNESS: The gentleman asked me that. We
11 don't keep track of denials. In the time period, there
12 was no way to go out and contact local people. I could not
13 guess. When you say success rate, let me add we don't give
14 up.

15 Typically, what it is instead of taking two or
16 three or four or five months which might seem to be reasonable,
17 you end up with two years. You go back with a new plan and
18 they don't like that.

19 I asked in ~~the~~ Long Island system for \$8 from \$7.25.
20 I finally got \$8.50 a year and a half later. We agreed to
21 build a half million dollar plant. The fifty was a reaonable
22 rade off. It was not a windfall for the company. We felt it
23 fairly balanced the area of subscriber density; homes passed
24 per mile of plant. That is the key to success in cable
25 television. We wired according to homes per mile of plant.

etpl1

1 We effectively, after a year and a half got what
2 we asked for.

3 Q But it took you a long time?

4 A I am talking about a year and a half beyond the
5 point we expected. It was something like a total of two
6 years and about six or seven trips of mine from California
7 to New York to bring it about.

8 Q You told us about the problems of so-called
9 deregulated systems where there is at least one large regulated
10 system in the area. Is this problem of a lead community
11 true also even where the systems are regulated?

12 A Yes. There are several answers to that. If you
13 have two cities of similar systems, you get into a whipsaw.
14 You go to one and they say go over there first. They both
15 stand waiting for the other to act.

16 I have heard real horror stories in the industry
17 like that. We have had some ourselves. Typically, the
18 question he is asking where we have a larger community and
19 several smaller, you are waiting your time to go to the
20 smaller community. They are going to key-off whatever the
21 larger community does.

22 They would love to be in a position to have you
23 get a rate increase in town A and you ask for the same thing
24 in town B. They give you a nickel or a quarter or dollar
25 less so in their campaign literature they say we saved you a.

etpl2

1 nickel or so less.

2 Q In relating the several trips to Long Island and the
3 175 franchises and the 294 rate increases, what kind of a
4 burden does this put on even a company your size in terms of
5 attempting to obtain increases, the effort that is needed.
6 Prior to the time we acquired communications property, I had an
7 assistant. He served as our analyst of acquisitions but a
8 good time was spent with me.

9 At that point, we handled 25 franchisee which
10 were probably on the average somewhat larger than the average
11 franchise we acquired of communications property which had
12 about 150 or something like that. We now have an administrative
13 assistant and a financial guy with a Master's Degree.

14 We have gone through the planning process for 1981.
15 We budget in August and September for the following five
16 years. We have put together a rate plan for 1981 and to some
17 extent those deferred we don't feel to go to in '81 are
18 scheduled in '82.

19 We are trying to figure out how to do the work.
20 It is expensive. I budgeted 40 cross country trips during
21 1981. I am satisfied we will have to add more to my staff
22 during that time. The biggest problem is with our 41 systems,
23 we have 41 people out in the field.

24 They can go do this work. It does not work.
25 We tried having local systems managers. Local system managers

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etpl3

1 have a broad chore to run an office staff, technicians and
2 installers and deal with the community, unhappy subscribers;
3 to try to expect him to be able to discuss the economics
4 of cable and the financial aspect of cable television and
5 profits just does not work.

6 We are looking at seminars. Perhaps, business
7 agents in the region. We have five regional offices. That
8 is one way we may go. I am certain we are going to the
9 business concept. The question is pulling them into the rate
10 area.

11 Q Let me ask you this question since you are dis-
12 cussing the problem of getting a rate increase effort going in
13 a particular community.

14 How far ahead do you schedule and plan for a rate
15 increase effort? How long does it take you to prepare for this
16 effort in a particular community?

17 A As I mentioned, we have planned rate increases
18 through '81 into the Fall and the Spring of '82. Those
19 cases will be filed as best we can knowing the history of the
20 town, what has happened in previous cases well enough in ad-
21 vance so we can comfortably meet projected dates and a new
22 rate may be put into affect.

23 It will vary at the minimum four months to one
24 that we file. You get into this problem of rates were
25 increased a year and a half ago. You apply now. If they take

etpl4 1 a year and a half and finally approve a rate, you are limited
2 not to file again a year or a year and a half that you filed
3 the last time. They expect you to come back from a year and
4 a year and a half when they approved the case.

5 The rubber band gets stretched further and further.
6 It is hard to give you a date or period of time. Rates have
7 taken from one meeting to 50 meetings with the Boards and
8 commissions and committees. The State of New York has
9 added four months onto the tierafter the local government
10 approved.

11 You file it with the state. It is published in a
12 paper and a bunch of monkey shines. I don't think they have
13 ever failed to approve it but after you go through it with the
14 local government you go through it with the State of New York.

15 Q I will ask you to relate for us some specific
16 examples which exemplify the kinds of problems which one can
17 run into to try to obtain a rate increase from a local
18 authority?

19 A I picked out some that I think are typical of
20 the kinds of actions that we see. In Del Rio, Texas this
21 year, we applied for a 75 cents increase. From \$7.25 to \$8
22 in April. Financial data were submitted. Rates were not
23 changed since July of '78. We filed slightly less than two
24 years since the last rates were implemented. Several meetings
25 back and forth, the city staff came back and advised something

etpl5. 1 to the effect that the company is making enough profit. They
2 recommend a denial. They gave no real reasons, no financial
3 data. The city council said we will give them a quarter.

4 The increase became effective in September. Did
5 you value how the rate application was made in February to
6 go from \$7.50 to \$8.25. These are signals where almost every
7 system is imported by microwave or common carrier service;
8 a fairly expensive operation, ongoing expenses.

9 In August after we applied in February, the City
10 Council denied it. Those rates had not been changed since
11 July of '80.

12 Q July of when?

13 A '78. I am sorry. Greenport is a small city out
14 of the tip of Long Island. This is a good one. We applied
15 in August of '78. The first meeting considering the applica-
16 tion was in May of 1979. They scheduled a public hearing
17 finally after a lot of encouragement in October of 1979.

18 In January, we wrote a letter. The assistant
19 manager tries to play the game without upsetting the local
20 people who must vote for him. He talked to many by phone.
21 Finally, a letter was sent in January. In March, he was
22 advised by the city clerk that the city's intention was to
23 deny the rate increase.

24 He advised that he would like to be there. My
25 partner, staff man at that time, went back in April. In

etpl6 1 June, the City Council approved that requested change in
2 rate.

3 Q June of what year?

4 A June of 1978. We applied in August of '78 and ap-
5 proved in June of '80. The state improved in September from
6 \$7.25 to \$8.05. I don't know whether the Commission is aware
7 or not. In Connecticut in 1979, I believe the state PUCA
8 or whatever they call them, PUC, had on their own motion
9 directed the staff to consider and develop a plan as to how
10 the copyright payments might be passed through to subscribers.

11 The staff worked on this. In February they came
12 to the various companies and asked each company to report
13 what a plan of theirs might be.

14 Q February of this year?

15 A February, 1980. Whether we would add all of it
16 to the primary rate or the secondary rate, what we thought
17 would be a proper amount. All responded. We were advised
18 they were going through the mechanics and in April or May
19 there would be a new rate for our systems in Connecticut.

20 Finally, it got to the Commission in August of
21 '80. They said we can't do that. We can't do that. We need
22 a public hearing. The rate denied. Their posture, I think,
23 is if you want to add copy rates we recognize it is a new
24 expense since last copyrate prices were processed in the state.
25 We were talking about 19 cents per month. A rate case in

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etp 18

1 the city council had not given reasons for the denial. The
2 court approved bad faith on the part of the City Council. I
3 am not an attorney and I don't understand what bad faith is.

4 If all of them lined up and said they did not care
5 and they didn't care what would happen, authority of that it
6 is almost impossible to prove. Our franchise expired. The
7 City Council took the posture your franchise is going to expire
8 in a couple of years, that is the time to change your rates.

9 That was a pitiful fight. About six months of
10 negotiation which I will call it. We ended up turning the
11 system off to get our franchise renewed properly. The
12 end result was rate increase provision of the 60 percent of the
13 consumer price index each two and a half years.

14 Escondido, the City Times Marret acquired that system
15 in '71. A rate increase was requested in '72. It was denied.
16 It was requested again in '73. After a year, the increase
17 was approved. Low rate, \$.55. They approved the change
18 to \$5.45; a 90 cents increase. We had asked for \$6.50 which
19 was a more common rate.

20 Q That was in 1973, it was granted. It was requested
21 in '73.

22 A Granted late in the year of December of '73, as
23 I recall. They formed a new body, franchise commission, to
24 handle the rate of cable television, trash, taxi, tow trucks,
25 and those kinds of services. We began meeting with that

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etpl9 1 commission continuing on with requests that we made before.
2 A year later in February of 1976, they approved the case.
3 Early '76, we went back and spent another year of meeting
4 with them. New rates went into effect in '77.

5 I think the rate went to \$7.48. With a lot of
6 work, we were being successful there. I was at those meetings
7 twice a month literally from 1973 until the end of 1976. We
8 had a new City Council and thought there might be a flavor,
9 and I tell this to express how we get beat to our news.

10 I think both the city and we get beat. We requested
11 a deregulation. The City of Sacramento had deregulation a
12 system. We felt it might be a good way to get away from the
13 bad press by tagging something like that. After a year of
14 meetings we were successful in having the Council change their
15 ordinance to permit an annual increase of 60 percent of the
16 consumer price index.

17 Q Mr. Young, thank you for those examples of problems
18 encountered in the rate incese. Let me move to another line
19 of questioning.

20 I will ask you are you familiar with the concept
21 of cable television offering tiered service?

22 A Yes.

23 Q Does your company offer and/or plan to offer
24 tied basic services?

25 A Yes. We do provide them.

etp20 1 Q You do provide some now on your existing system?

2 A Yes.

3 Q You are planning or hoping to provide some on
4 new systems; is that correct?

5 A Yes.

6 Q In offering those tiered systems, Mr. Young, do
7 you presently offer or are you proposing to offer a universal
8 or free tier of service?

9 A To my recollection, we have never in an application
10 even though it might have been unsuccessful every proposed
11 a free service. We have proposed something like \$3.95. I
12 think that was Lexington where we were not a winner.

13 Q When you have those inexpensive tiers such
14 as \$3.95, what type of service do you offer?

15 A Access channels. Community service channels. Our
16 local origination effort. The school government and public
17 access channel if such. Time. Weather.

18 Q No broadcast?

19 A I do not recall. My recollection is it did not
20 include local broadcastings.

21 Q In that event, what do you place on the subsequent
22 tiers, in other words, on the second tier? Where would you
23 place the broadcast generals?

24 A We have to talk generally because we have many
25 schemes proposed and plans for existing systems. Typically,

etp21

1 in existing systems the existing local systems would probably
2 be included among the lower first, the first 12 channels
3 without a terminal device, a converter or other terminal
4 device. Beyond that, signals from a broader area could be
5 included in the next tier, satellite tiers, turners channel
6 17, WOR or WGN could be a third tier. Above that, we would be
7 movie services.

8 Q What kind of a rate or subscriber rate or price do
9 you ask for these subsequent tiers?

10 A We are just completing rebuilding systems in
11 California in Orange County and offering a new service in a
12 30 channel system in Long Beach, California that has not
13 carried 30 channels recently.

14 The tiered service price for those is \$11.45 which
15 sticks in my mind. It seems to me that is the price for
16 the 30 channel service which includes in those areas all Los
17 Angeles signals plus satellite.

18 Q All broadcasting signals that you carry on the
19 system would be included in the full 30 channel servi-e?

20 A That is correct.

21 Q At a \$11.45 rate?

22 A Yes. That is somewhat higher.

23 Q Was that a yes?

24 A Yes. I don't want to mislead the Commission. In
25 the newer systems where we are adding tiered services, I think

etp22

1 the same scheme would generally be true but I think the price
2 would be more in the \$8.95, generally, \$9 range for that
3 broader service.

4 Q Are you saying despite the advent of the tiering
5 mechanism, the effective rate for the receipt of all of the
6 broadcast signals is as high or as higher than in your classic
7 system?

8 A Yes. I think that would be true without exception.

9 Q Now in terms of these tiers and marketing these
10 tiers, are you familiar with what your marketing projections
11 are for the number of subscribers who might take such tiers
12 prior to getting into pay?

13 A Separate pay, I think Long Beach is an interesting
14 system in California. It is one of the early urban systems
15 which was built. It is yet an area where now, today, 16
16 channels offer receivable with a \$20 antenna. That system
17 was there in late 1970, start operating in 1970. It enjoyed
18 16 percent marketing.

19 We kid about the bright young assistang manager.
20 The turnover is high. Some years we have had as high as 80
21 percent turnover in subscribers. They are down to 55 percent
22 now. I don't know if the community is more stable or we have
23 reached more people and find more stable people. It was a
24 12 channel system with pay added. Pay was up to 55 percent
25 of the basic subscribers. That is very, very high. It is.

etp23

1 typical of the kind of penetrations that the urban markets are
2 seeing in older systems that brought pay in after the system
3 was originally established. They have now gone to 30 channels.
4 They have brought in the whistles and bells. 17, Nicholodean,
5 consumer shopping channel. All the things you see in the new
6 franchise proposals.

7 We are achieving about a fiver percent basic
8 penetration lift through that.

9 Q Thus, the advent of tiering?

10 A Yes. Here is where the question about pay is
11 answered. Pay has been there. We have added home box office
12 to showtime which was there for some years. The two issues
13 are separate which get garbled in in new urban markets where
14 everything comes in at one time and you can't separate which is
15 which.

16 We are contending we will increase basic subscribers
17 by five percent which is an important change in the system.

18 Q Is there an addition of the mix of cable originated
19 programming with broadcast programming, do you attribute much
20 of this lift in basic to the addition of this kind of so-called
21 cable originated programming, Nicholodean, you mentioned, for
22 example?

23 A I think 17 is important. The VKPN and the
24 Nicholodean are really different.

25 Q Thus, the advent of the tiering in the basic

etp24 1 service area is causing you to have more subscribers?

2 A Yes.

3 Q In an existing system?

4 A Yes.

5 Q When you do tiering and we have been talking about
6 basic tiering, you have also stated that you offer pay services,
7 is that correct?

8 A Yes.

9 Q Must a subscriber, what must a subscriber do in
10 terms of tiered service before he is eligible to subscriber
11 to pay services?

12 A I am trying to think of others where it is not
13 a requisite that a subscriber have the tier service, building
14 block concept. You may subscriber to pay and discount services
15 if you take three. There are discounts then.

16 In Long Beach three or four years ago we offered
17 pay only where somebody could subscriber and put an AB switch
18 on and not have cable. That was \$10 a month plus cable was
19 \$17 or \$18 a month.

20 After a couple of years, we had 200 or 300 sub-
21 scribers who took pay only. People will pay for cable
22 television services.

23 Q Is the company practice at this point, therefore,
24 to require a subscription to the several tiers prior to the
25 ability to purchase pay?

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1 A Yes. There are two reasons. One is that increases
2 our revenues. We think it adds service and gives people a
3 more complete service rather than fractionalizing. You have
4 to spend money, is the other. You have to spend money to
5 prevent people from seeing it.

6 Where you have a full spectrum of services on the
7 cable, more people subscribing, the less hardware is required.
8 I see a frown on the Chairman's face.

9 CHAIRMAN BURG: I thought I understood until
10 30 seconds ago.

11 THE WITNESS: Let's say, channelling and a tier of
12 Nicholodean and pay. If I wanted to let someone receive pay
13 in the bottom 12, I have to eliminated the middle. Generally,
14 in frequency they are going up. Technical demands. Some
15 device to prevent people from seeing it. If they take it
16 all, I don't need the device. It is that simple.

17 You have to spend money to charge less. If you
18 wanted to offer pay at a lower price, lower total price without
19 the tier as opposed to with the tier, you would spend money
20 to charge the lower price.

21 CHAIRMAN BURG: I thought your question was going
22 in another direction, Mr. Feldstein.

23 MR. FELDSTEIN: No. That concludes my question
24 of the witness.

25 CHAIRMAN BURG: Let's take a brief recess for the

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1 reporter and be back in five minutes.

2 (Recess was taken.)

3 CHAIRMAN BURG: Back on the record.

4 COMMISSIONER BRENNAN: Mr. Young, could you give
5 us an average figure for your system of what percentage of
6 the total operating expenditures is devoted to copyright
7 payments?

8 THE WITNESS: I am sorry. I am not in accounting.

9 COMMISSIONER BRENNAN: Two previous witnesses
10 have mentioned one and a half percent. Does that sound
11 reaonsable?

12 THE WITNESS: I am trying to think if they were
13 ATC and Warner. I think the statistical distribution of the
14 kind of systems would be similar. We are both classic
15 in the new urban markets. I think they derived that data,
16 ours would be in the same range.

17 COMMISSIONER BRENNAN: What has happened to your
18 personnel cost since 1976?

19 THE WITNESS: I can't quote percentages. But,
20 certainly, the cable industry is paying higher rates and faced
21 with serious employee problems throughout the industry
22 right now. I think the employee rates are going to take the
23 biggest jump yet in the next years.

24 CHAIRMAN BURG: Mr. Attaway.

25

CROSS-EXAMINATION

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BY MR. ATTAWAY:

Q Mr. Young, I believe you testified that 12 of your systems are completely regulated; is that correct?

A Yes.

Q What is the average subscriber systems, do you know?

A No. I do not.

I could derive it. I think I have the data here. I would have to spend 10 minutes going through it.

Q Could you list those systems for us?

If you have the rates for those systems, I would be pleased to know that as well.

A This is the kind of data I would have to go through to pick it out. It is not a number I attempted to select. It would be risky to try to do it here in a few minutes.

Q Would those systems average \$9, over \$9?

A No.

Q Less?

A Yes.

1 Q I believe you testified that in answer to a
2 question from Ms. Burg, if you were not subject to any kind
3 of regulation, the marketplace would probably just tie rates
4 approximately 25 percent higher than your average rate today;
5 is that correct?

6 A Yes. I don't believe the \$11 is going to go up
7 25 percent regulated or not.

8 Q But your average?

9 A \$7 quarter--I think I said \$10 is the rate we think
10 we ought to be selling at today. Why are those systems not
11 at \$10?

12 Q Yes.

13 A The variety of the plants, the age of the plants,
14 history in that town, had we been more aggressive in rating
15 the rates than CPI was prior to that time; how long has it
16 been deregulated--all kinds of things enter into changes in
17 a town. When we can raise the rates, we raise the rates.

18 CHAIRMAN BURG: Lest there be some confusion
19 on the various CPIs that we are talking about.

20 THE WITNESS: When I say "CPI", the company
21 acquired by the Times Mirror Company. This is January of
22 1979 and was not known as Communications Properties, Incorporated,
23 from Austin, Texas.

24 MR. FELDSTEIN: I think the Chairman was concerned
25 that you acquired the Consumer Price Index.

1 COMMISSIONER BRENNAN: Which your counsel
2 tells us would have been a bad investment.

3 BY MR. ATTAWAY:

4 Q Am I correct in understanding, in 12 systems which
5 are completely free of regulations, you have not been able
6 to achieve subscriber rates in excess of \$9?

7 A Somewhere either at nine or over nine dollars
8 and a quarter. You asked me to remember among 175. I give
9 less attention to unregulated systems than the regulated
10 because they demand attention. I don't get

11 Q On the average, what do you think the subscriber
12 rate would be 25 percent higher than your present average
13 rate of \$7.27. Am I correct in understanding that the 12
14 systems which are completely unregulated have not been able to
15 achieve that 25 percent increase?

16 A That's correct.

17 Q For purely marketplace factors unrelated to
18 regulations?

19 A Perhaps I need to correct the record.
20 If tomorrow, you said the 175 systems were regulated,
21 the day after that, the rates would not be \$10. Three years
22 from now there hopefully would be \$10 adjusted to today's
23 dollar or something like that.

24 Q Why would it take three years?

25 A Just because of all the different kinds of

1 conditions that are involved.

2 COMMISSIONER GARCIA: What are some?

3 THE WITNESS: Towns with local head ends where signal
4 are not good. We need to build a microwave so signals are
5 improved, training a staff and all the things that go with
6 it. The feeling on the part of some counsel, they don't
7 want it. Don't bring tier or pay.

8 CHAIRMAN BURG: If you were deregulated that
9 would not be a factor?

10 THE WITNESS: Then we could move forward and
11 do those things, but it would take time.

12 BY MR. ATTAWAY:

13 Q You spoke in response to one question of
14 counsel about the delay in achieving rate increases when
15 you are regulated. Are you saying now that you also experience
16 delay even when you are not regulated, marketplace delay in
17 achieving rate increases due to the factors you've mentioned?

18 A The problems are different, but we still try to
19 make good business decisions about how often to change rates
20 and in what amount and whether it is necessary to try to create
21 at least the image,atmosphere that we are bringing something
22 new to the subscribers for the changed rate. We are more
23 willing in unregulated to offer a new service and change the
24 rate. You don't get into problems of having to do that the
25 next time--trying to horse trade.

1 Q Is it correct that there are other factors
2 other than regulations that influence when and how much you
3 increase your rates?

4 A Yes.

5 Q Mr. Young, earlier in your testimony, you
6 indicated that philosophically you were opposed to the
7 regulation of cable televisions by state and local authority;
8 is that correct?

9 A No. I said I thought City Council was a peer
10 forum for regulations, and I did not really think television,
11 cable was a utility like service. When you say am I opposed
12 to regulation, are you talking about the rates?

13 Q Yes.

14 A I think the television industry would have grown
15 more rapidly and been further along than it is if rates were
16 not regulated.

17 Q Is it not correct that in the overwhelming
18 majority of the cases cable television does constitute a
19 geographical monopoly?

20 A Geographical monopoly?

21 MR. FELDSTEIN: I object to that. That is
22 asking something with an adverb in it. What is a monopoly?
23 This is not a lawyer. That depends on competitive services,
24 how you define a market and things of that nature. That would
25 be a highly subjective answer since it is a highly subjective

1 question.

2 MR. ATTAWAY: I will rephrase the question.

3 BY MR. ATTAWAY:

4 Q Mr. Young, in the areas that you serve, do
5 residents have available to them a competing cable television
6 service?

7 A Only in very few instances.

8 Q So, in most cases, you are the only service within
9 your franchise area offering cable television services?

10 A Yes.

11 Q But, you do not think that warrants rate
12 regulation by the City Council?

13 A I guess I do not.

14 Q I'm sure you are aware of the purpose of this
15 proceeding; are you not?

16 A I am.

17 Q The primary issue to be decided here is whether
18 the Tribunal should adjust the compulsory license copyright
19 payments upward to maintain a real constant dollar value of
20 the royalty. I assume that you would oppose an upward
21 adjustment of the rate; is that correct?

22 A I spend time opposing increases in franchise
23 fees, any fee, particularly those that effect our gross
24 revenue, yes.

25 Q Why is it that you would oppose the rate
regulation of cable television where in most cases the consumer

1w-6

1 is not, does not have a competing service available? Yet,
2 you are here today supporting the regulation of copyright
3 owners?

4 MR. FELDSTEIN: I object to that question. I
5 don't understand where that is leading. I think that is a
6 "when did you stop beating your wife" question.

7 MR. ATTAWAY: Madam Chairman, the witness did
8 testify that he is opposed to regulation of cable television.
9 If he is content to express that opinion, I think he is content
10 to express why he favors the regulation of copyright owners.

11 MR. FELDSTEIN: It is immaterial. The Act
12 in fact sets the mechanism, sets the rate, provides for
13 this proceeding. There it is. Here we are acting under that
14 provision. What the witness may think of what we are doing
15 here today I think would be immaterial.

16 CHAIRMAN BURG: Mr. Attaway, could you rephrase
17 that question? Perhaps the Chair won't have to make a ruling
18 on it in that event.

19 MR. ATTAWAY: I will try.

20 BY MR. ATTAWAY:

21 Q Mr. Young, what factor in the production and
22 direction of the broadcast material which you use do you
23 think justifies this Tribunal in refusing to adjust the
24 rates upward as copyright owners have suggested?

25 MR. FELDSTEIN: I renew my objection. I do not

1 see any relevance of this question to the central question
2 which is before this Tribunal. That is how much, if at all,
3 to adjust the copyright royalty rate. This witness is an
4 expert in cable television. He is not an expert in how much
5 programming costs broadcasters or the motion picture distribu-
6 tors.

7 He is here to testify to the difficulties that
8 he has had in obtaining rate increases for cable television
9 systems, and how he structures his tiered services. That is
10 all he has testified to.

11 CHAIRMAN BURG: I'm going to sustain the
12 objection, Mr. Feldstein.

13 BY MR. ATTAWAY:

14 Q Mr. Young, I believe you testified that some of
15 the regulatory authorities with jurisdiction over your systems
16 have tied rate increases to the Consumer Price Index; is
17 that correct?

18 A Five.

19 Q Are you aware or have any regulatory jurisdictions
20 tied rate increases to any other index than the CPI?

21 A No.

22 Q I believe you testified that Connecticut is a
23 state that imposes strict rate regulation on systems; is that
24 correct?

25 A I don't recall saying that, but they do.

1 Q You have a system in Marion, Connecticut?

2 A Meriden.

3 Q Meriden?

4 A Yes.

5 Q Do you recall the rate?

6 A \$8.65.

7 Q 85 cents?

8 A \$8.65.

9 Q How were you able to achieve a basic rate in
10 Meriden, Connecticut, subject to strict rate regulations
11 that are significantly higher than your average overall
12 rate of \$7.27?

13 A Well, that is interesting that you picked that
14 one. It tells the story of regulation in cable. Connecticut
15 uses utility concept for the regulation of cable television
16 rates, base rate of return, cost of money studies, all the
*** 17 things attendant to the classic utility regulation in cable
18 television. I don't know what happened to telephone and
19 industries when they were young, but applying this at the
20 beginning of an industry as Connecticut is at systems' start
21 does not work. At early years high rates are justified.

22 The plants that are brand new, the expense is
23 high. The rates are high, based on the rate of return concept.
24 As the system gets old, you hypothetically would get down to the
25 point where you collect expenses and no profit under that

1 system. In Connecticut that new system started with a 30-
2 channel operation. We felt in that market, 30 channels was
3 a reasonable point to start at.

4 You can go into new markets and you can do that.
5 It will work. I believe that without competition, some of
6 the new franchise areas would be franchised at those rates.
7 When companies are hanging their hats on the future and
8 going with lower rates in new franchises, then the rates are
9 lower. Great risks I think are attached to that. Did I
10 answer?

11 Q Yes, sir. In fact, you led me right into
12 the next question.

13 You testified that you think unregulated rates
14 would approach 25 percent higher than your existing average
15 which would be somewhere in the neighborhood of \$9 plus. The
16 information I have available indicates that your bid for the
17 Lexington, Kentucky system included a basic rate of \$6.25; is
18 that correct?

19 A I don't recall. I said that Lexington, I thought,
20 was a service of \$3.95. You have the information there. Was
21 service below? If it was not, I'm wrong. \$6.25 was a rate
22 for services without any broadcast signals.

23 Q The Kagan Newsletter, Cable Regulations Report
24 that--

25 A Kagan does a good job of trying to collect a lot of

1 data. I don't think it is a good source of information for
2 proceeding on.

3 Q I will take a different tactic. In your recent
4 bids for cable franchises, are you suggesting a basic able
5 rate in the neighborhood of the \$9 plus rate that you think
6 is justified in the marketplace?

7 A No. I'm proposing less than that consistently.

8 Q Consistently less than that?

9 A Yes.

10 Q Is it correct to assume that whatever rate you
11 are suggesting is a rate that would be profitable to you if
12 you obtained the franchise?

13 A Like all the companies are in a posture of
14 saying over a period of time if new services
15 develop as they expect and less dependent on broadcast tele-
16 vision, yes. We can be profitable. I don't think anybody
17 is proposing that the rate will not change.

18 Some cities demand rates stay for two years until
19 construction is complete. Inherent in all of this is the
20 anticipated changes in rates over the period of the franchise.

21 Q Are your systems subject to pay cable rate
22 regulations?

23 A We have had cities and states try. I am trying
24 to recall if we had any case. I'm going to a town in Ohio
25 where the City Council thinks that is the issue. I hope when

1 I finish it will not be the area. We believe FCC preempted
2 that area.

3 Q Are any of your systems now subject to the
4 regulations of pay cable rates?

5 A It would have to be a resident franchise that
6 we have been successful in. Perhaps a small one in Boston.
7 I don't recall. I don't believe so, and I'm not certain.

8 Q Mr. Young, you testified that in one system or
9 one state, I don't recall, you requested a rate increase that
10 would be a pass through for the copyright fees that you were
11 paying. Was that a state or an individual system?

12 A It was Connecticut. We were invited by the
13 state to request that.

14 Q You requested 19 cents per subscriber per month;
15 is that correct?

16 A That is my recollection, yes.

17 Q Why did you request a 19 cent increase?

18 A In that system, that's the copyright payment.
19 I could be mixing up Meriden and Hartford; but, there are
20 two different numbers by three or four cents. One more import
21 in Meriden than Hartford. I don't recall the details.

22 Q Well, going back again to your average rate of
23 \$7.27, 19 cents is a significantly higher percentage than
24 your overall average copyright fee of somewhere in the
25 neighborhood of 1.5 percent.

1 A You just told me Meriden was \$8.60. Hartford
2 is \$8.95. They are not the average system.

3 Q You testified at quite some length about
4 your operations in Long Beach, California. I believe you
5 said the rate for the tier, including most broadcast signals
6 is \$11.45; is that correct?

7 A Yes.

8 Q Are you subject to rate regulations in Long
9 Beach?

10 A Yes.

11 Q I believe that one of the factors you attributed
12 to achieving a five percent lift in Long Beach was the
13 addition of channel 17; is that correct?

14 A I know. I don't believe that is what I said.
15 I feel the group of services of which channel 17 is one
16 increased that lift.

17 Q Yes. I said one of the facts, not the only
18 factor. Do you have any idea of how much in copyright you
19 are paying to carry channel 17?

20 A No, that just begin. The marketing of that service
21 has just begin and would be subject to payments in this
22 next period. I don't handle payment and anticipated expense.

23 Q Do you have any idea of the satellite common
24 carrier charges to deliver the service to Long Beach?

25 A I don't handle that are either. I get mixed up.

1 It is something like 20 cents a month--just a round-house
2 guess.

3 Q Mr. Young, could you tell us or do you have the
4 information readily available to you what the basic rate
5 is for your system in Glendalin, Pennsylvania?

6 A Glenolden?

7 Q Glenolden.

8 A If I find the right list--. My records say
9 it is \$7, effective 8-1-78.

10 Q Lower than the overall average?

11 A Yes.

12 Q What with Philadelphia?

13 A Philadelphia, \$7.

14 Q And Reading?

15 A It is \$5 currently.

16 Q Do you have any idea what percentage of your over-
17 all revenue in those systems is attributable to pay cable?

18 A No.

19 Q Is pay cable revenue more or less than basic
20 cable revenue?

21 A It could be more if people subscribe to two
22 pay services. I doubt if it is more. We have both home
23 box office and show time.

24 Q Is pay cable penetration on those systems
25 greater than the pay cable penetration, the average pay cable
penetration on all of your systems?

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1 A I don't know.

2 Q In Reading, Pennsylvania, which you said had
3 a five dollar rate which is very low, why has the rate kept
4 so low?

5 A It is a good example of the business decisions
6 we are involved in. The franchise was recently renewed and
7 we may raise the rate to \$7. ATC and we are overbidding
8 each other and people in Reading can chose ATC service or our
9 service. Our rates are higher than their rates. The
10 combined rate is the same of about \$6.50. We have a
11 marketing advantage presently over them.

12 Q You are subject to competition in Reading with
13 another system?

14 A Yes.

15 Q You stated that you have achieved a balance
16 between your basic rate and your pay rate in Reading to
17 obtain a competitive advantage over ATC?

18 A A slight advantage in the rate for combined
19 services, yes.

20 Q Do you frequently consider the level of your
21 pay cable rate in determining the level of your basic
22 cable rate?

23 A Do you look at total package pricing?

24 Q Yes.

25 A Yes.

1 Q Going back to the purpose of this proceeding
2 which is to adjust the rate, the royalty rates, are you
3 familiar with overall percentage increase that copyright
4 owners have stated would be justified on the basis of the
5 circumstances which existed as of April of this year?

6 A I'm not sure I understand the question. I am
7 sure I don't know the answer.

8 Q Let me tell you. Although this is not our
9 proposal to the Tribunal, we have stated that as of April of
10 this year, we feel that the increase in the Consumer Price
11 Index as compared with the percentage of increase in
12 basic cable rates since 1976 would justify a 20 percent
13 increase in the royalty rate.

14 Do you have any idea how that 20 percent increase
15 in royalty rates, if it were placed into effect, would effect
16 your copyright payments overall?

17 A No.

18 Q In either dollars, percentage terms?

19 A I don't handle copyright payments. I'm sorry.
20 I don't know what our copyright payments were last year.

21 Q Are you at all familiar with the operating costs
22 of your system?

23 A Not in percentages. I deal in rate cases for
24 specific systems, often taking a system apart and the franchise
25 data so we can present financial information on the franchise.

1 I have run systems and understand them. Try me.

2 Q Okay. I will do that. Based on your experience,
3 could you rank the top three or four or five major operating
4 costs of running a cable television system in order of
5 magnitude, starting with the highest?

6 A Frequently, but not always depreciation would
7 be the highest cost. Next is going to be wages. If you
8 include allocation of management services and all wages
9 that might effect the operational systems, wages would
10 probably more frequently be the highest number. That's the
11 problem in talking about expenses. Two different companies
12 do things differently.

13 Direct allocations or passing down regional
14 costs and overhead charge. So, you need to have a chart of
15 accounts to sit and talk about expenses. In general, the
16 wages and depreciation. I don't know what would be third
17 offhand.

18 Q Would pole rental be a major cost?

19 A Well, it is a significant cost, but I don't think
20 a major cost.

21 Q Are copyright fees a significant cost?

22 MR. FELDSTEIN: I object. I'm not sure in
23 addition to not having a system of accounts to guide us. This
24 reminds me of the size of olives. What is colossal or
25 humongous? What is significant? I'm not comfortable with

lw-17

1 the way it is being asked.

2 THE WITNESS: If I might defend myself?

3 MR. FELDSTEIN: Wait.

4 MR. ATTAWAY: Madam Chairman, I was using
5 terminology the witness suggested. He briefly stated that
6 pole rental was a significant cost, but not a major cost.
7 Using his terminology, I would like to find out what copyright
8 payments are.

9 COMMISSIONER BRENNAN: Hasn't he responded to
10 that question previously? The question was asked. I'm not
11 sure of the answer. But, the question was asked.

12 THE WITNESS: I said I did not know.

13 MR. ATTAWAY: I believe my question was in relation
14 to the total copyright payment made by his systems.

15 MR. FELDSTEIN: Couldn't the question be asked?
16 Not asking counsel's questions for him. But, does he want
17 to know whether one expense is greater or lesser than another?

18 MR. ATTAWAY: I would be glad to rephrase my
19 question in that manner.

20 BY MR. ATTAWAY:

21 Q Do you know if your copyright payments are
22 greater or lesser than the other expenses you have listed
23 which I believe weren't salaries to personnel, pole rentals?

24 A I did not mention interest.

25 Q Depreciation?

1 A Depreciation and wages were the ones I
2 identified.

3 Q Let me throw interest in as well.

4 A Well, I'm trying to think if interest for us is
5 not a major cost. Time systems equity -- Time as a corporation
6 is not heavily leveraged. All I can say is copyright and
7 pole rent are less than either depreciation or wage. I
8 don't know whether pole rent is more or less than copyright.

9 MR. ATTAWAY: That concludes my questions.

10 Thank you, Mr. Young.

11 Madam Chairman, the witness speaks about the 12
12 systems that were unregulated. He was unable to quickly
13 give us a list of those systems. Could I ask that the
14 witness at some subsequent time provide that list of 12 systems
15 for the record?

16 CHAIRMAN BURG: Yes, indeed. Would you do that,
17 sir?

18 THE WITNESS: Promptly.

19 CHAIRMAN BURG: Mr. Feldstein, before you commence
20 your redirect, Mr. Young, the other day I asked a witness,
21 in trying to get a feel for how many staff people you have
22 in your various operations, and I know it varies from one
23 to another, but is there some rule of thumb in terms of how
24 many staffers it would take for X number of customers or
25 subscribers?

1 THE WITNESS: We have used for some years a
2 technique of measuring subscribers versus local operating
3 employees, the office staff technical people, not including
4 regional offices or headquarters personnel. We try to
5 keep our systems in the rank of about 1,000 subscribers per
6 month. That means to turn it around and give everyday terms,
7 a system of 5,000 people should probably be supported by
8 two people in the office, three office staff and a small
9 part of a system manager who would run that and several other
10 systems of that size. That is the typical--. We have a number
11 of situations where a system manager travels. He spends the
12 afternoon in one system and one in another in the afternoon
13 five miles down the road.

14 CHAIRMAN BURG: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. FELDSTEIN:

17 Q Mr. Young, you testified in response to a question
18 by Commissioner Brennan that your personnel costs have been
19 and will in the future be increasing. Is a significant part
20 of that--. Mr. Ross reminds me I should not use the
21 word "significant" since I objected to it. Can this increase
22 in your personnel cost be attributed to a rapid expansion in
23 the amount, quality and kind of personnel that you need?
24 That is, in terms of the growth of your number of systems
25 and the type of things you are doing.

1 A The business is changing and demands a different
2 person today than it did five years ago.

3 Q We are talking about quality and quantity?

4 A I think more quality than quantity.

5 Q For example, how many systems did you have in
6 1976?

7 A I couldn't--we've talked about the combination
8 of CPI and--I don't know the answer to that.

9 Q You have testified that a significant, at least,
10 increase in the number of subscribers?

11 A Yes.

12 Q I would presume there would be an increase in
13 the number of systems as a general matter?

14 A Well, I think yes. We do try to consolidate
15 offices and systems, franchises get a little garbled. We
16 call a system an operating function. They are our people.
17 They answer the phone and serve subscribers and often a
18 handful of franchises.

19 MR. FELDSTEIN: No more questions.

20 CHAIRMAN BURG: I will not set a date for the
21 rebuttal period this morning. I do wish to set a date of
22 October 20th, which will be a Monday, two weeks from today
23 for the parties to submit a list of witnesses for rebuttal.

24 MR. ATTAWAY: Madam Chairman, you used the
25 plural, parties.

1 CHAIRMAN BURG: Witness or witnesses.

2 MR. ATTAWAY: Are you saying NCTA will be
3 allowed to present a rebuttal witness?

4 CHAIRMAN BURG: Yes.

5 MR. ATTAWAY: Madam Chairman, it has been my
6 very distinct feeling that there last five witnesses were
7 rebuttal witnesses in that their testimony included
8 rebuttal of the case that MPAA or--excuse me--the copyright
9 owners presented previously.

10 MR. FELDSTEIN: Madam Chairman, insofar as
11 we have been able to rebut certain points with the witnesses
12 scheduled, we have done so; thus, saving everyone time and
13 effort in rebutting. There were certain other points made by
14 the witnesses for the copyright owners we could not rebut
15 using the witness list which was changed; and thus, needed to
16 be rebutted in our view.

17 CHAIRMAN BURG: I repeat, Monday, October 20th,
18 I would like each party to submit a list of witnesses or
19 witness for a rebuttal period. At a subsequent time, I
20 will notify you as to the date of rebuttal itself.

21 MR. GARRETT: It presents a disadvantage with
22 the person who goes first. This disadvantage was experienced
23 by the copyright owners. I wonder during the rebuttal if
24 we could have the same opportunity to have an opportunity to
25 go second, so we can hear what they say first.

1 CHAIRMAN BURG: We will take that under advisement.

2 MR. ZELENKO: Music will join in that request, or
3 at least ASCAP.

4 COMMISSIONER BRENNAN: Madam Chairman, if this
5 body decides to adopt any adjustment of cable royalties,
6 it may have some impact on the form of the Copyright Office
7 and the operating procedures of the office. I therefore
8 propose that the Chairman be authorized to request the Office
9 to review this record and to give us at an early date their
10 technical recommendations concerning the impact of various
11 proposals upon the operations of the office.

12 CHAIRMAN BURG: So ordered.

13 That's it. We will conclude this phase of
14 the hearings. We will be in touch with the parties with
15 respect to that date.

16 Thank you, Mr. Young for coming back.

17 (Whereupon, the hearing was concluded at

18 11:33 a.m.)
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Figure 6